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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CHARLES MITCHELL, individually)	Case No.
and on behalf of all others similarly)	
situated,)	<u>CLASS ACTION</u>
)	
Plaintiff,)	COMPLAINT FOR VIOLATIONS
)	OF:
vs.)	
)	1. VIOLATIONS OF
RASH CURTIS & ASSOCIATES and)	ELECTRONIC FUNDS
DOES 1-10,)	TRANSFER ACT [15 U.S.C.
)	§1693 ET SEQ.]
)	
Defendant(s).)	<u>DEMAND FOR JURY TRIAL</u>
)	

Plaintiff CHARLES MITCHELL (“Plaintiff”), on behalf of himself and all others similarly situated, alleges the following against Defendant RASH CURTIS & ASSOCIATES upon information and belief based upon personal knowledge:

INTRODUCTION

1. Plaintiff’s Class Action Complaint is brought pursuant to the Electronic Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”).

2. Plaintiff, individually, and on behalf of all others similarly situated,

1 brings this Complaint for damages, injunctive relief, and any other available legal
2 or equitable remedies, resulting from the illegal actions of Defendants debiting
3 Plaintiff's and also the putative Class members' bank accounts on a recurring basis
4 without obtaining a written authorization signed or similarly authenticated for
5 preauthorized electronic fund transfers from Plaintiff's and also the putative Class
6 members' accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. §
7 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b). Plaintiff
8 alleges as follows upon personal knowledge as to himself and his own acts and
9 experiences, and, as to all other matters, upon information and belief, including
10 investigation conducted by his attorneys.

11 **JURISDICTION AND VENUE**

12
13 3. This Court has jurisdiction under 28 U.S.C. 1331, because this action
14 is brought pursuant to the EFTA, 15 U.S.C. 1693 *et seq.*

15 4. Jurisdiction of this Court arises pursuant to 15 U.S.C. 1693(m), which
16 states that, "without regard to the amount in controversy, any action under this
17 section may be brought in any United States district court."

18 5. Venue and personal jurisdiction in this District are proper pursuant to
19 28 U.S.C. 1391(b) because Plaintiff resides within this District and Defendant does
20 or transact business within this District, and a material portion of the events at issue
21 occurred in this District.

22 **PARTIES**

23 6. Plaintiff, Charles Mitchell ("PLAINTIFF"), is a natural person
24 residing in Monterey County in the state of California, and is a "consumer" as
25 defined by 15 U.S.C. §1693a(6).

26 7. At all relevant times herein, DEFENDANT, Rash Curtis &
27 Associates ("DEFENDANT"), was a company engaged in the business of debt
28 collection.

1 8. The above named Defendant, and its subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
4 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
5 names. Each of the Defendants designated herein as a DOE is legally responsible
6 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend
7 the Complaint to reflect the true names and capacities of the DOE Defendants
8 when such identities become known.

9 9. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendant was acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions
14 complained of herein was made known to, and ratified by, each of the other
15 Defendants.
16

17 **FACTUAL ALLEGATIONS - EFTA**

18 10. Prior to July of 2016, Defendant purchased a debt allegedly owed by
19 Plaintiff.

20 11. Without obtaining authorization from Plaintiff, Defendant began
21 deducting sums from Plaintiff’s account on a regular basis.

22 12. Plaintiff never provided Defendant with any authorization to deduct
23 these sums of money on a regular recurring basis from Plaintiff’s banking account.

24 13. Defendants continued to deduct this monthly sum from Plaintiff for
25 several months without Plaintiff’s authorization.

26 14. Further, Defendants did not provide to Plaintiff, nor did Plaintiff
27 execute, any written or electronic writing memorializing or authorizing these
28 recurring or automatic payments.

1 15. Plaintiff alleges such activity to be in violation of the Electronic
2 Funds Transfer Act, 15 U.S.C. 1693 et seq. (“EFTA”), and its surrounding
3 regulations, including, but not limited to, 12 C.F.R. §§1005.7, 1005.8, and 1005.9.

4 **CLASS ACTION ALLEGATIONS**

5 16. Plaintiff brings this action on behalf of himself and all others similarly
6 situated, as a member of the proposed class (hereafter “The Class”) defined as
7 follows:

8 All persons in the United States whose bank accounts
9 were debited on a reoccurring basis by Defendants
10 without Defendants obtaining a written authorization
11 signed or similarly authenticated for preauthorized
12 electronic fund transfers within the one year prior to the
filing of this Complaint.

13 17. Plaintiff represents, and is a member of, The Class, consisting of all
14 persons within the United States whose bank account was debited on a recurring
15 basis by Defendants without Defendants obtaining a written authorization signed
16 or similarly authenticated for preauthorized electronic fund transfers within the one
17 year prior to the filing of this Complaint.

18 18. Defendants, their employees and agents are excluded from The Class.
19 Plaintiffs do not know the number of members in The Class, but believe the Class
20 members number in the hundreds, if not more. Thus, this matter should be certified
21 as a Class Action to assist in the expeditious litigation of the matter.

22 19. The Class is so numerous that the individual joinder of all of its
23 members is impractical. While the exact number and identities of The Class
24 members are unknown to Plaintiff at this time and can only be ascertained through
25 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
26 The Class includes hundreds, if not thousands, of members. Plaintiff alleges that
27 The Class members may be ascertained by the records maintained by Defendants.
28

1 20. This suit is properly maintainable as a class action pursuant to Fed.
2 R. Civ. P. 23(a) because the Class is so numerous that joinder of the Class members
3 is impractical and the disposition of their claims in the class action will provide
4 substantial benefits both to the parties and to the Court.

5 21. There are questions of law and fact common to the Class affecting the
6 parties to be represented. The questions of law and fact to the Class predominate
7 over questions which may affect individual Class members and include, but are
8 not necessarily limited to, the following:

9 a. The members of the Class were not provided with, nor did they
10 execute, written agreements memorializing the automatic or recurring electronic
11 payments.

12 b. Defendants did not request, nor did it provide, Class members with
13 written agreements memorializing the automatic or recurring electronic payments.

14 c. The members of the Class did not provide either a written (“wet”) or
15 otherwise electronic signature authorizing the automatic or recurring electronic
16 payments.

17 d. Despite not providing written or electronic authorization for
18 payments to be drawn from their accounts, Defendants took unauthorized
19 payments from Class members’ accounts.

20 22. As someone whose bank account was debited on a reoccurring basis
21 by Defendants without Defendants obtaining a written authorization signed or
22 similarly authenticated for preauthorized electronic fund transfers, Plaintiff is
23 asserting claims that are typical of The Class.

24 23. Plaintiff will fairly and adequately protect the interests of the members
25 of The Class. Plaintiff has retained attorneys experienced in the prosecution of class
26 actions.

27 24. A class action is superior to other available methods of fair and
28

1 efficient adjudication of this controversy, since individual litigation of the claims
2 of all Class members is impracticable. Even if every Class member could afford
3 individual litigation, the court system could not. It would be unduly burdensome
4 to the courts in which individual litigation of numerous issues would proceed.
5 Individualized litigation would also present the potential for varying, inconsistent,
6 or contradictory judgments and would magnify the delay and expense to all parties
7 and to the court system resulting from multiple trials of the same complex factual
8 issues. By contrast, the conduct of this action as a class action presents fewer
9 management difficulties, conserves the resources of the parties and of the court
10 system, and protects the rights of each Class member.

11
12 25. The prosecution of separate actions by individual Class members
13 would create a risk of adjudications with respect to them that would, as a practical
14 matter, be dispositive of the interests of the other Class members not parties to such
15 adjudications or that would substantially impair or impede the ability of such non-
16 party Class members to protect their interests.

17 26. Defendants have acted or refused to act in respects generally
18 applicable to The Class, thereby making appropriate final and injunctive relief with
19 regard to the members of the Class as a whole.

20 27. Defendants failed to comply with the writing and notice requirements
21 of § 907(a) of the EFTA, 15 U.S.C. § 1693e(a) as to the Class members with respect
22 to the above alleged transactions.

23 28. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a
24 “preauthorized electronic fund transfer from a consumer’s account may be
25 authorized by the consumer only in writing, and a copy of such authorization shall
26 be provided to the consumer when made.”

27 29. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the
28 term “preauthorized electronic fund transfer” means “an electronic fund transfer

1 authorized in advance to recur at substantially regular intervals.”

2 30. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that
3 “[p]reauthorized electronic fund transfers from a consumer’s account may be
4 authorized only by a writing signed or similarly authenticated by the consumer.
5 The person that obtains the authorization shall provide a copy to the consumer.”

6 31. Section 205.10(b) of the Federal Reserve Board's Official Staff
7 Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he
8 authorization process should evidence the consumer’s identity and assent to the
9 authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further
10 provides that “[a]n authorization is valid if it is readily identifiable as such and the
11 terms of the preauthorized transfer are clear and readily understandable.” *Id.* at
12 ¶10(b), comment 6.

13 32. In multiple instances, Defendants debited bank accounts of the Class
14 members on a recurring basis without obtaining a written authorization signed or
15 similarly authenticated by the respective Class members for preauthorized
16 electronic fund transfers from the accounts of the respective Class members,
17 thereby violating § 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section
18 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

19 33. In multiple instances, Defendants debited Class members’ bank
20 accounts on a recurring basis without providing a copy of a written authorization
21 signed or similarly authenticated by the respective Class members for
22 preauthorized electronic funds transfers, thereby violating Section 907(a) of the
23 EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. §
24 205.10(b).

25 34. The size and definition of the Class can be identified through
26 Defendant’s records and/or Defendant’s agents’ records.
27
28

COUNT I:
DEFENDANTS VIOLATED THE ELECTRONIC FUNDS TRANSFER
ACT
(On Behalf of Plaintiff and the Class)

35. Plaintiff reincorporates by reference all of the preceding paragraphs.

36. Section 907(a) of the EFTA, 15 U.S.C. §1693e(a), provides that a “preauthorized electronic fund transfer from a consumer’s account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made.”

37. Section 903(9) of the EFTA, 15 U.S.C. § 1693a(9), provides that the term “preauthorized electronic fund transfer” means “an electronic fund transfer authorized in advance to recur at substantially regular intervals.”

38. Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), provides that “[p]reauthorized electronic fund transfers from a consumer’s account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.”

39. Section 205.10(b) of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205.10(b), Supp. I, provides that “[t]he authorization process should evidence the consumer’s identity and assent to the authorization.” *Id.* at ¶10(b), comment 5. The Official Staff Commentary further provides that “[a]n authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.” *Id.* at ¶10(b), comment 6.

40. In multiple instances, Defendants have debited Plaintiff’s and also the putative Class members’ bank accounts on a recurring basis without obtaining a written authorization signed or similarly authenticated for preauthorized electronic fund transfers from Plaintiff’s and also the putative Class members’ accounts, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section

205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

41. In multiple instances, Defendants have debited Plaintiff's and also the putative Class members' bank accounts on a recurring basis without providing a copy of a written authorization signed or similarly authenticated by Plaintiff or the putative Class members for preauthorized electronic fund transfers, thereby violating Section 907(a) of the EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, CHARLES MITCHELL, individually, and on behalf of all others similarly situated, respectfully requests judgment be entered against Defendant, for the following:

42. That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;

43. Statutory damages of \$1,000.00, per Class Member, pursuant to the Electronic Fund Transfer Act, §916(a)(2)(A);

44. Actual damages;

45. Costs and reasonable attorneys' fees pursuant to the Electronic Fund Transfer Act, §916(a)(3);

46. For prejudgment interest at the legal rate; and

47. Any other relief this Honorable Court deems appropriate.

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TRIAL BY JURY

48. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully submitted this 29th day of October, 2016.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff